

A. G. Contract No. KR99-2136TRN  
ADOT ECS File: JPA 99-143  
Project: STP-000-6(133)P  
TRACS: STP SW VAR SR152 01C  
Section: Gilbert Road  
AAR/DOT No 741-819-Y

**INTERGOVERNMENTAL AGREEMENT**  
BETWEEN  
THE STATE OF ARIZONA  
AND  
TOWN OF GILBERT

THIS AGREEMENT is entered into 10 November, 1999, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the TOWN OF GILBERT acting by and through its MAYOR and TOWN COUNCIL (the "Town")

**I. RECITALS**

1. The State is empowered by Arizona Revised Statutes Section 28-401 and 28-334 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.
  2. The Town is empowered by Arizona Revised Statutes Section 48-572 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the Town.
  3. The Arizona Corporation Commission is empowered by Arizona Revised Statutes Section 40-337 to participate in the funding of this project, and has authorized funds for this project.
  4. Congress has authorized appropriations for the erection of automatic warning signals, automatic gate arms, plank crossings, pavement markings, and other appurtenances.
  5. Such project within the boundary of the Town has been selected by the Town; the field survey of the project has been completed; and the plans, estimates and specifications have been prepared and, as required, submitted to the Federal Highway Administration ("FHWA") for its approval.
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NO. 23665  
Filed with the Secretary of State  
Date Filed: 11/10/99  
Betsy Gayless  
Secretary of State

B. Dick V. Greenewald

6. The only interest of the State in the project is in the acquisition of federal funds for the use and benefit of the Town by reason of federal law and regulations under which funds for the project are authorized to be expended.

7. The work embraced in this agreement and the estimated cost are as follows: Upgrade Railroad Crossing (Gilbert Road)

Preliminary and Construction Engineering	\$ 2,958 00
Upgrade Existing Roundels from 8" diameter to 12" Diameter (by railroad forces)	\$ 7,152 00
Total Project	=\$10,110 00
Federal Aid Funds @ 94.3% of \$10,110.00	=\$ 9,534.00
AZ Corp. Comm. Funds @ 5.7% of \$10,110 00	=\$ 576 00
Town of Gilbert Funds	=\$ 0.00

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

## **II. SCOPE OF WORK**

1. The State shall submit a program containing the aforementioned project to FHWA with the recommendation that it be approved for construction

a. If such project is approved for construction by FHWA and the funds are available for construction of the project, the State with the aid and consent of FHWA will authorize the Railroad Company to proceed with the work covered by the State-Railroad Agreement and will request the maximum federal funds available.

b. Should some unforeseen conditions or circumstances increase the cost of said work required by a change in the extent or scope of the work called for in this agreement, the State shall not be obligated to incur any expenditure in excess of the amount of the Town's deposit unless and until so authorized in writing by the Town.

2. The Town shall acquire the necessary right-of-way and hereby certifies that all necessary rights-of-way have been or will be acquired

3. Once acquired, the Town shall remove from the Town right-of-way all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the roadway, and hereby certifies that all obstructions and encroachments have been or will be removed therefrom.

4. The Town shall not permit or allow any encroachments, except those authorized by permit, upon, or private use of, the Town right of way. In the event of any unauthorized encroachment or improper use, the Town shall take all necessary steps to remove or prevent any such encroachment or use.

5. Upon completion of construction, the Town shall provide (exclusive of maintenance by the Railroad Company of its facilities) traffic signals, signs, islands, curbs and markings necessary for the purpose of regulating, warning and guiding traffic.

6. The Town shall mark and sign railway-highway grade crossings in accordance with the requirements of the current edition of the Manual on Uniform Traffic Control Devices for Streets and Highways, within 45 days after the railroad has completed its work; failing that, the State may proceed with the marking and signing thereof, the cost of which shall be borne by the Town.

7. By such regulation as it may by ordinance provide, the Town shall regulate parking and not permit vehicles to be left on the street in any manner other than at and parallel with the curb and to restrict parking so as to prevent conflicts with moving traffic.

### **III. MISCELLANEOUS PROVISIONS**

1. The State assumes no financial obligation or liability under this agreement, nor for any resulting construction project. The Town, in regard to the Town's relationship with the State only, assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost over-runs and construction claims. Such assumption of the responsibility by the Town for the benefit of the State in no way acts as a waiver by the Town for the benefit of the railroad company or any responsibility the railroad company has in the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost overruns and construction claims. It is understood and agreed that the State's participation is confined solely to securing federal aid; that any damages arising from carrying out, in any respect, the terms of this agreement or any modification thereof, shall be solely the liability of the Town and that the Town hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance of any provisions of this agreement by the State, any of its departments, agencies, officers and employees, the Town, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, expenses of litigation and attorneys' fees.

2. The cost of the design, construction and construction engineering work covered by this agreement is to be borne by FHWA, Arizona Corporation Commission and the Town, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this agreement. Therefore, in the event that funds to match federal funds are not made available by the Corporation Commission, the Town agrees to furnish and provide the State with Town funds in an amount equal to the difference between the total cost of the work provided for in this agreement and the amount of federal aid received.

3. This agreement shall remain in force and effect until completion of the work herein embraced; provided, however, that any provisions in this agreement for maintenance shall be perpetual, unless assumed by another competent governmental entity.

4. This agreement shall become effective upon filing with the Secretary of State.

5. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

6. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

7. In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

8. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 South 17 Avenue, Mail Drop 616E  
Phoenix, AZ 85007

Town of Gilbert  
Interim Street Transportation Director  
200 West Washington Street, 5th Floor  
Phoenix, AZ 85003-1611

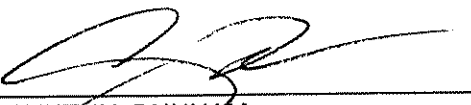
9. Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

**TOWN OF GILBERT**

**STATE OF ARIZONA**

Department of Transportation

By   
CYNTHIA DUNHAM  
Mayor

By   
CATHERINE J. HEGEL  
Contract Administrator

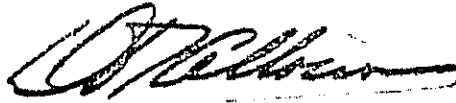
ATTEST:

By   
CATHY TEMPLETON  
Town Clerk

RESOLUTION

BE IT RESOLVED on this 27<sup>th</sup> day of August 1999, that I, the undersigned MARY E. PETERS, as Director of the Arizona Department of Transportation, have determined that it is in the best interests of the State of Arizona that the Department of Transportation, acting by and through the Intermodal Transportation Division, to enter into an agreement with the Town of Gilbert, for the purpose of defining responsibilities for the acquisition of federal funds, upgrading the railroad crossing located at Gilbert Road, Project # STP-000-6(133)P.

Therefore, authorization is hereby granted to draft said agreement which, upon completion, shall be submitted to the Contract Administrator for approval and execution.

A handwritten signature in black ink, appearing to read 'D. Allocco', written over a horizontal line.

DAVID R. ALLOCCO, P.E.  
Assistant State Engineer  
Engineering Technical Group

for MARY E. PETERS, Director

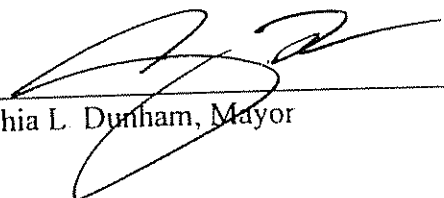
RESOLUTION NO. 2092

A RESOLUTION OF THE COMMON COUNCIL OF THE TOWN OF GILBERT, ARIZONA, AUTHORIZING THE MAYOR TO EXECUTE AN INTRGOVERNMENTAL AGREEMENT WITH THE ARIZONA DEPARTMENT OF TRANSPORATION


WHEREAS, the Common Council of the Town of Gilbert, Arizona, has determined it is in the best interest of the Town to enter into an intergovernmental agreement with the State of Arizona, Arizona Department of Transportation for the purpose of defining responsibilities for the funding, design and construction of improvements to the Union Pacific Railroad Crossing on Gilbert Road.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the Town of Gilbert, Arizona, that the Mayor be and is hereby directed to execute the intergovernmental agreement between the State of Arizona and the Town of Gilbert, JPA 99-143.

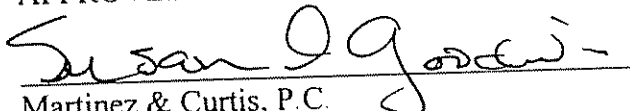
PASSED AND ADOPTED BY THE MAYOR AND COUNCIL OF THE TOWN OF GILBERT, ARIZONA THIS 12th DAY OF October, 1999.

  
Cynthia L. Dunham, Mayor

ATTEST:

  
Catherine A. Templeton, Town Clerk


APPROVED AS TO FORM:

  
Martinez & Curtis, P.C.  
Town Attorneys  
By: Susan D. Goodwin

Resolution No. 2092

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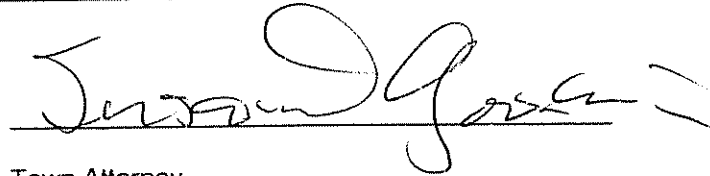
I hereby certify that the above and foregoing Resolution No. 2092 was duly passed by the Council of the Town of Gilbert, Arizona, at a regular meeting held on October 12, 1999, and that a quorum was present thereat and that the vote thereon was 7 ayes and 0 nays and 0 abstentions. 0 Councilmembers were absent or excused.

  
Catherine A. Templeton, Town Clerk

APPROVAL OF THE TOWN OF GILBERT ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION and the TOWN OF GILBERT, and declare this agreement to be in proper form and within the powers and authority granted to the Town under the laws of the State of Arizona

DATED this 12 day of October 1999



Town Attorney





STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

1275 WEST WASHINGTON, PHOENIX, AZ. 85007-2926

JANET NAPOLITANO  
ATTORNEY GENERAL

TRN Main: (602) 542-1680

Direct: (602) 542-8837

Fax: (602) 542-3646

MAIN PHONE : (602) 542-5025

FACSIMILE : (602) 542-4085

**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR99-2136TRN, an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATED October 27, 1999.

JANET NAPOLITANO  
Attorney General

JAMES R. REDPATH  
Assistant Attorney General  
Transportation Section

JRR:et/94734

Enc.